

MICHAEL KAUFMAN (SBN 254575)  
mkaufman@aclusocal.org  
ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
1313 West 8th Street  
Los Angeles, California 90017  
Telephone: (213) 977-5232  
Facsimile: (213) 915-0219

*Attorneys for Plaintiffs-Petitioners*

*Additional Counsel for Plaintiffs  
on Following Page*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

XOCHITL HERNANDEZ, CESAR  
MATIAS, for themselves and on  
behalf of a certified class of  
similarly situated individuals,

*Plaintiffs-Petitioners,*

v.

MERRICK GARLAND, U.S.  
Attorney General, et al.,

*Defendants-Respondents.*

Case No. 5:16-00620-JGB-KK

**DECLARATION OF MICHAEL  
K.T. TAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES AND  
EXPENSES**

Hearing Date: March 28, 2022  
Hearing Time: 9:00 a.m.  
Complaint Filed: April 6, 2016

Honorable Jesus G. Bernal

1 MICHAEL TAN (*pro hac vice*)  
mtan@aclu.org  
2 JUDY RABINOVITZ (*pro hac vice*)  
JRabinovitz@aclu.org  
3 AMERICAN CIVIL LIBERTIES FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
4 125 Broad Street, 18th Floor  
New York, New York 10004-2400  
5 Telephone: (212) 549-2618  
Facsimile: (212) 549-2654

6 STEPHEN KANG (SBN 292280)  
skang@aclu.org  
7 AMERICAN CIVIL LIBERTIES FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
8 39 Drumm Street  
San Francisco, California 94111  
9 Telephone: (415) 343-0783  
10 Facsimile: (415) 395-0950

11 DOUGLAS A. SMITH (SBN 290598)  
dougsmith@mayerbrown.com  
12 MAYER BROWN LLP  
350 S. Grand Ave, 25<sup>th</sup> Floor  
13 Los Angeles, California 90071  
Telephone: (213) 229-9500  
14 Facsimile: (213) 625-0248

15 MATTHEW E. SLOAN (SBN 165165)  
matthew.sloan@skadden.com  
16 ASHLEY PHILLIPS (SBN 318397)  
ashley.phillips@skadden.com  
17 WINSTON P. HSIAO (SBN 273638)  
winston.hsiao@skadden.com  
18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
300 S. Grand Ave, Suite 3400  
19 Los Angeles, California 90071  
Telephone: (213) 687-5276  
20 Facsimile: (213) 621-5276

21 *Attorneys for Plaintiffs-Petitioners*  
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26  
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**DECLARATION OF MICHAEL K.T. TAN**

I, Michael K.T. Tan, declare:

1. I am a Deputy Director of the ACLU Immigrants' Rights Project ("ACLU IRP"), which is co-counsel for Plaintiffs in this case. I am a member of the New York State Bar. The facts set forth herein are known to me personally and, if called as a witness, I could and would testify competently to these facts.

**I. Overview of Timekeeping Procedures**

2. ACLU IRP maintains the following timekeeping practices. Attorneys and staff (paralegals, legal assistants, and legal interns) record daily time logs. Those logs reflect the time worked on each matter for that day and a description of the work done.

**II. Qualifications of ACLU IRP Attorneys**

3. As explained in Plaintiffs' Motion for Attorneys' Fees, this case involves complex immigration and constitutional issues that required unique expertise in the intricacies of the immigration laws. Accordingly, Plaintiffs seek an enhanced hourly rate consistent with the private Los Angeles market where this case was litigated. Four IRP timekeepers seek attorneys' fees in this case: myself, Stephen Kang, Celso Perez, and David Hausman. The following section describes our qualifications for market rates.

4. I graduated from the Yale Law School in 2008 and served as a Law Clerk to the Honorable M. Margaret McKeown, U.S. Court of Appeals for the Ninth Circuit, from 2009 to 2010. I joined ACLU IRP as a Liman Fellow from 2008 to 2009 and returned as a Skadden Fellow from 2010 to 2012. Since 2012, I have been a member of the permanent staff, first serving as a Staff Attorney, then a Senior Staff Attorney, and now as a Deputy Director.

5. I am admitted to practice in the state of New York and have been admitted to the bars of the U.S. Supreme Court; the U.S. Courts of Appeals for the First, Third,

1 Fourth, Ninth, Tenth, Eleventh, and D.C. Circuits; and the U.S. District Courts for  
2 the Eastern District of Michigan and Northern District of California.

3 6. In 2014, I was named a California Lawyer of the Year in immigration law. I  
4 am also the recipient of the National Asian Pacific American Bar Association's  
5 2016 Best Lawyers Under 40 Award and the National LGBT Bar Association's  
6 2017 Best LGBT Lawyer Under the Age of 40 Award.

7 7. I have more than 12 years of experience litigating immigrants' rights cases  
8 in federal court, with a focus on class action litigation on behalf of detained  
9 immigrants. Over the past decade, I have litigated as lead counsel or co-counsel in  
10 major cases challenging arbitrary immigration detention in the U.S. Supreme  
11 Court, Courts of Appeals, and federal district courts. These cases include *Nielsen v.*  
12 *Preap*, 139 S. Ct. 954 (2019), where I served as counsel of record, *Jennings v.*  
13 *Rodriguez*, 138 S. Ct. 830 (2018), and *Garland v. Gonzalez*, No. 20-322 (U.S.).

14 8. In addition to the instant case, other major detention cases I have litigated  
15 include *Dubon Miranda v. Barr*, 463 F. Supp. 3d 632 (D. Md. 2020) (granting  
16 preliminary injunction placing the burden of proof on the government at  
17 immigration bond hearings and prohibiting the wealth-based detention of  
18 immigrants in Maryland); *Brito v. Barr*, 415 F. Supp. 3d 258 (D. Mass. 2019)  
19 (granting summary judgment placing the burden of proof on the government at  
20 immigration bond hearings and prohibiting the wealth-based detention of  
21 immigrants in Massachusetts and New Hampshire); *Abiala v. Barr*, No. 7:19-cv-  
22 00082-HL (M.D. Ga. filed June 6, 2019) (challenging the wealth-based detention  
23 of immigrants in the Middle District of Georgia); *Padilla v. ICE*, 379 F. Supp. 3d  
24 1170 (W.D. Wa. 2019), *affirmed in part*, 953 F.3d 1134 (9th Cir. 2020), *cert.*  
25 *granted, judgment vacated*, 141 S. Ct. 1041 (Jan. 11, 2021) (granting nationwide  
26 preliminary injunction requiring constitutionally adequate bond hearings for  
27 detained asylum seekers); *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018)  
28 (granting preliminary injunction against the arbitrary detention of asylum seekers

by five U.S. Immigration and Customs Enforcement Field Offices (“ICE”)); *Rodriguez v. Robbins*, No. 07-03239-TJH-E (C.D. Cal), 591 F.3d 1105 (9th Cir. 2010), 715 F.3d 1127 (9th Cir. 2013), 804 F.3d 1060 (9th Cir. 2015); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (challenging the prolonged detention without bond hearings of immigrants held in the Central District of California); *Reid v. Donelan*, 297 F.R.D. 185 (D. Mass. 2014), 22 F. Supp. 3d 84 (D. Mass. 2014), 819 F.3d 486 (1st Cir. 2016), 390 F. Supp. 3d 201 (D. Mass. 2019), 17 F.4th 1 (1st Cir. 2021) (same, for immigrants held in Massachusetts and New Hampshire); *Alli v. Decker*, No. 4:09-cv-00698-JEJSF (M.D. Pa), 644 F. Supp. 2d 535 (M.D. Pa. 2009), 650 F.3d 1007 (3d Cir. 2011) (same, for immigrants held in Pennsylvania); *Preap v. Johnson*, 303 F.R.D. 566 (N.D. Cal. 2014), 831 F.3d 1193 (9th Cir. 2016), *Nielsen v. Preap*, 139 S. Ct. 954 (2019) (challenging the mandatory detention of immigrants in California who were not taken into immigration custody upon their release from criminal custody); *Khoury v. Asher*, 3 F. Supp. 3d 877 (W.D. Wash. 2014) (same, for Washington State); *Gordon v. Johnson*, 300 F.R.D. 31 (D. Mass. 2014), 842 F.3d 66 (1st Cir. 2016) (same, for Massachusetts); *Gayle v. Warden, Monmouth County*, 4 F. Supp. 3d 692 (D.N.J. 2014), 81 F. Supp. 3d 371 (D.N.J. 2015), 838 F.3d 297 (3d Cir. 2016), No. 12-2806 (FLW), 2019 WL 4165310 (D.N.J. Sept. 3, 2019), 12 F.4th 321 (3d Cir. 2021) (challenging the mandatory detention of individuals with substantial challenges to removal in New Jersey); *R.I.L.R. v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015) (granting nationwide preliminary injunction against the detention of migrant families seeking asylum based on deterrence); *Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wa. 2015) (granting summary judgment against immigration court’s failure to consider detainees for release on recognizance in Washington State).

9. Most of these cases, including *Nielsen v. Preap*, *Jennings v. Rodriguez*, *Brito v. Barr*, *Reid v. Donelan*, *Khoury v. Asher*, *Gordon v. Johnson*, *Gayle v.*

1 *Warden, Monmouth County, Damus v. Nielsen, R.I.L.R. v. Johnson, and Rivera v.*  
2 *Holder*, are class actions where I was appointed class counsel.

3 10. In *Rivera v. Holder*, I sought an enhanced hourly rate under the Equal  
4 Access to Justice Act (“EAJA”), and the district court awarded fees consistent with  
5 that rate pursuant to an agreement between the parties. *See Rivera v. Holder*, No.  
6 2:14-cv-01597-RSL (W.D. Wash. Dec. 18, 2015) (Stip. Mot. & Order Concerning  
7 Plaintiff’s Motion for Attorneys’ Fees) (ECF 72).

8 11. Through these cases and others, I have come to acquire distinctive  
9 knowledge and specialized skill in the areas of immigrants’ rights litigation and  
10 class action litigation in the federal courts. I am routinely called upon to advise  
11 other lawyers and advocates concerning the due process rights of detained  
12 immigrants, particularly those who are litigating federal court actions. I regularly  
13 give CLE and other public presentations to attorneys concerning the rights of  
14 detained immigrants. I provide technical assistance, including reviewing briefs and  
15 assisting in preparation for hearings, to other practitioners litigating federal cases  
16 on these topics. I also regularly speak to nonlegal audiences and the media  
17 regarding immigration law and policy.

18 12. **Stephen Bonggyun Kang** has worked as an Equal Justice Works Fellow,  
19 then a Detention Attorney, at IRP since 2013. Mr. Kang graduated from New York  
20 University School of Law in 2011 and clerked for the Hon. Kermit V. Lipez of the  
21 U.S. Court of Appeals for the First Circuit, and the Hon Margaret M. Morrow (ret.)  
22 of the U.S. District Court for the Central District of California. Mr. Kang has been  
23 admitted to practice in California since 2013. He is admitted to the bars of the U.S.  
24 Courts of Appeals for the Third, Fifth, Sixth, and Ninth Circuits, and the U.S.  
25 District Courts for the Central, Northern, and Southern Districts of California and  
26 the District of Colorado.

27 13. Since coming to IRP, Mr. Kang’s practice has focused on the rights of  
28 noncitizens subject to removal and deportation, including those in immigration



1 detention. In addition to his work on this case, his active litigation regarding  
2 detained immigrants includes *Damus v. Nielsen* and *RILR v. Johnson*, described  
3 above.

4 14. Mr. Kang specializes in systemic litigation and advocacy involving  
5 particularly vulnerable populations in the removal system, such as detained  
6 children and asylum-seeking families. His cases in this area include: *Ms. L. v. ICE*,  
7 310 F. Supp. 3d 1133 (S.D. Cal. 2018), *modified*, 330 F.R.D. 284 (S.D. Cal. 2019)  
8 (enjoining government practice of separating asylum-seeking children from their  
9 parents at border); *A.I.I.L. v. Sessions*, 19-cv-00481-JAS (D. Az. filed Oct. 3,  
10 2019) (damages action on behalf of separated immigrant families); *Saravia for*  
11 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (affirming preliminary injunction  
12 against unlawful arrest and detention of noncitizens based on flawed gang  
13 allegations); *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017) (amicus counsel)  
14 (upholding rights of detained immigrant children to custody hearings); *Duchitanga*  
15 *v. Lloyd*, 1:18-cv-10332 (S.D.N.Y. filed Nov. 6, 2018) (challenging widespread  
16 and severe delays in release of children in government custody due to  
17 fingerprinting backlogs).

18 15. Mr. Kang has also litigated a number of other cases concerning the due  
19 process rights of noncitizens in the removal process, including: *C.J.L.G. v. Barr*,  
20 880 F.3d 1122 (9th Cir. 2018) (en banc) (reversing removal order of unrepresented  
21 child for failure to advise of relief eligibility); *J.E.F.M. v. Lynch*, 837 F.3d 1026  
22 (9th Cir. 2016) (dismissing for lack of jurisdiction class action seeking appointed  
23 counsel for children); *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG  
24 DTBX, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) (detailed injunctive order  
25 concerning appointed counsel rights for noncitizens with mental disabilities facing  
26 removal); *United States v. Peralta-Sanchez*, 705 F. App'x 542 (9th Cir. 2017)  
27 (amicus counsel) (case addressing rights of noncitizens to legal representation in  
28 fast-track removal process).

1 16. In *Saravia v. Sessions*, Mr. Kang sought an enhanced hourly rate under the  
2 EAJA, and the district court awarded fees consistent with that rate pursuant to an  
3 agreement between the parties. *See Saravia v. Garland*, No. 3:17-cv-03615-VC  
4 (N.D. Cal. June 7, 2021) (order approving settlements for fees and costs under the  
5 EAJA) (ECF 264).

6 17. Many of the cases described above are class actions, which has given him  
7 substantial expertise in litigating complex class actions involving the immigration  
8 system, including the statutory and regulatory scheme governing immigration  
9 detention. He is or was class counsel in *Ms. L v. ICE*, *Saravia v. Sessions*, *Damus*  
10 *v. Nielsen*, *RILR v. Johnson*, *J.E.F.M. v. Lynch*, and *Franco-Gonzalez v. Holder*.

11 18. Mr. Kang regularly gives CLE presentations lawyers and advocates  
12 concerning the rights of detained noncitizens and immigrant children, and provides  
13 technical assistance (including reviewing briefs and assisting in preparation for  
14 hearings) to other practitioners litigating federal cases on these topics. He also  
15 periodically speaks to nonlegal audiences regarding immigration and asylum  
16 policy.

17 19. **Celso Perez** was a Staff Attorney at the ACLU-IRP between 2018 and 2021.  
18 Mr. Perez graduated from Yale Law School in 2014. He is a member of the  
19 California, New York, D.C., and Florida bars. He is admitted to practice in  
20 multiple federal courts including the U.S. Supreme Court, the U.S. Courts of  
21 Appeals for the Second, Third, Fifth, Ninth, and D.C. Circuits, and the U.S.  
22 District Courts for the Central, Northern, and Southern Districts of California, the  
23 Western District of New York, and the District of Columbia. He is currently a law  
24 clerk for the Honorable Marcia G. Cooke of the U.S. District Court for the  
25 Southern District of Florida and will be clerking for the Honorable Jennifer Sung  
26 of the U.S. Court of Appeals for the Ninth Circuit in 2023-2024.

27 20. Mr. Perez has years of experience practicing immigration law. Prior to  
28 joining the ACLU, he was an associate attorney at Kurzban, Kurban, Weinger,



1 Tetzeli & Pratt, a top U.S. immigration firm. There he represented clients in  
2 administrative proceedings before various federal agencies, facing removal in  
3 immigration court and the Board of Immigration Appeals, and challenging agency  
4 actions before federal district courts.

5 21. Mr. Perez also has experience litigating complex immigration matters in  
6 federal court, including: *Mayorkas v. Innovation Law Lab*, No. 19-1212 (U.S.),  
7 *vacated* June 21, 2021 (statutory challenge to the “Migrant Protection Protocols”  
8 policy of returning asylum seekers to Mexico); *German Santos v. Warden*, 965  
9 F.3d 203 (3d Cir. 2020) (participated as amicus, successfully arguing for the due  
10 process right of noncitizens to receive a bond hearing after prolonged mandatory  
11 detention); *Make the Road New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020)  
12 (statutory challenge to the expansion of expedited removal proceedings); *Nora v.*  
13 *Wolf*, No. 20-cv-0993, 2020 WL 3469670 (D.D.C. June 25, 2020) (secondary  
14 challenge to policy of returning asylum seekers to Mexico; case raised novel  
15 Administrative Procedure Act and due process claims); *Thuraissigiam v.*  
16 *Archembault*, Case No. 3:19-cv-1092-JM-LL (S.D. Cal.), *filed* June 11, 2019  
17 (habeas challenge to an individual’s right to be released from prolonged  
18 immigration detention).

19 22. Through this work, Mr. Perez has developed significant expertise on federal  
20 court litigation to advance immigrants’ rights, including the rights of detained  
21 noncitizens.

22 23. **David Hausman** was a Skadden Fellow at the ACLU IRP from 2016-2018  
23 and remained at the project during 2019 as an attorney. Mr. Hausman graduated  
24 from Stanford Law School in 2015 and clerked for the Honorable Stephen F.  
25 Williams on the U.S. Court of Appeals for the D.C. Circuit. He is a member of the  
26 New York Bar and is admitted to practice in the Ninth Circuit.

27 24. Mr. Hausman has experience with complex immigration matters, including,  
28 among many others, *International Refugee Assistance Project v. Trump*, 137 S. Ct.

1 2080 (2017) (challenging the 2017 Executive Order instituting a travel ban from  
2 Muslim-majority countries) and *Rodriguez v. Swartz*, No. 15-16410 (*Bivens* action  
3 seeking damages for cross-border shooting). Mr. Hausman also has experience  
4 with class actions. He served as counsel in *Inland Empire Immigrant Youth*  
5 *Collective v. Barr*, a class action challenging hundreds of unlawful DACA  
6 terminations.

7 25. Before joining the ACLU-IRP, Mr. Hausman served as a consulting expert  
8 for the ACLU on several class actions, contributing statistical analyses. He  
9 continues to consult occasionally for the project. Mr. Hausman is currently a  
10 fellow at Stanford Law School's Regulation, Evaluation and Governance Lab and  
11 a postdoctoral fellow at Stanford's Digital Civil Society Lab. He has published on  
12 immigration law and other matters in the Proceedings of the National Academy of  
13 Sciences, Stanford Law Review, the University of Pennsylvania Law Review, the  
14 Journal of Law, Economics, and Organization, the Harvard Law Review Forum  
15 and the Georgetown Law Journal.

16 26. Through this work, Mr. Hausman has developed significant expertise on  
17 federal court litigation to advance immigrants' rights, including the rights of  
18 detained noncitizens.

19  
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed March 14, 2022 in Atlanta, Georgia.

22 /s/ Michael K.T. Tan

23 Michael K.T. Tan  
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